

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Selifonov et al.

Attorney Docket No.:  
MXGNP001X2 0124.510

Application No.: 09/539,486

Examiner: Zhou S.

Filed: March 30, 2000

Group: 1631

Title: METHODS FOR MAKING CHARACTER  
STRINGS, POLYNUCLEOTIDES AND  
POLYPEPTIDES HAVING DESIRED  
CHARACTERISTICS

## CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the  
United States Postal Service as First Class Mail for: Commissioner for  
Patents, Washington, DC 20231 on December 12, 2002.

Signed

*Leslie Russell*  
Leslie Russell

**PETITION TO WITHDRAW A HOLDING OF ABANDONMENT BASED ON FAILURE**  
**TO RECEIVE AN OFFICE ACTION -- MPEP § 711.03 (c) II**  
**37 CFR §1.181**

Assistant Commissioner for Patents  
Box DAC  
Washington, DC 20231

Sir:

In response to the Communication dated December 4, 2002, Applicants submit a revised Petition including a "copy of the docket record where the non-received Office communication would have been entered had it been received and docketed." This submission otherwise includes substantially the same Petition as filed August 20, 2002.

Applicants hereby petition to have the abandonment of the above-identified patent application withdrawn. The Examiner communicated with the undersigned attorney's secretary, Leslie Russell, on July 18, 2002 and explained that the subject application had gone abandoned for non-response to an Office Action mailed December 4, 2001. A Notice of Abandonment dated September 10, 200 has now been received.

This petition is premised on the fact that the law firm having Power of Attorney in this case until July 9, 2002 (and to whom Patent and Trademark Office correspondence relating to this case was mailed), never received an Office Action mailed December 4, 2001. In support of


this petition. Applicants submit a copy of the declaration of Jonathan Alan Quine (Law Offices of Jonathan Alan Quine) provided with the August 20, 2002 Petition. Dr. Quine was responsible for this application until July 9, 2002.

MPEP § 711.03(c) II states that if an allegation of non-receipt is adequately supported, the petition may be granted and a new Office letter mailed. According to this section, the petition should include a "statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received." Such statement is provided herewith. In addition, MPEP § 711.03(c) II requires a "copy of the docket record where the non-received Office communication would have been entered had it been received and docketed." Such docket record is provided with Dr. Quine's statement.

In view of the above, Applicants request that abandonment of the application be withdrawn and a new Office Action issued. In the event that this petition under MPEP § 711.03(c) II is denied, Applicant hereby petitions for revival of the application under 37 CFR § 1.137(a), as any delay in prosecution was unavoidable.

The Commissioner is authorized to charge any additional fees associated with this petition (whether under MPEP § 711.03 or 37 CFR § 1.137(a)) to Deposit Account No. 50-0388 (Order No.: MXGNP001X2).

Respectfully submitted,  
Beyer, Weaver & Thomas LLP

  
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(510) 843-6200

DEC 23 2002

COPY

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231, on August 20, 2002.

By

Leslie Russell  
Leslie Russell

QIPLG Docket No. 02-028940US  
Client Ref. No. 0124.510US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Sergey A. Selifonov et al.

Application No.: 09/539,486

Filed: March 30, 2000

For: **Methods for Making Character Strings,  
Polynucleotides and Polypeptides Having  
Desired Characteristics**

Examiner: Zhou S.

Art Unit: 1631

DECLARATION OF NON-RECEIPT OF  
OFFICE ACTION

Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

I have been informed by a current attorney of record (Sharon Fujita) for the above application that the Examiner called to inquire as to the status of the application in regard to an Office Action mailed by the Office on December 4, 2001.

The Law Offices of Jonathan Alan Quine (now the Quine Intellectual Property Law Group, P.C.) was the correspondence address of record at the time of the mailing by the Office. We are no longer the attorneys of record for the application, as the case has been transferred out of our firm. The case was transferred from the Quine Intellectual Property Law Group, P.C. to the law firm of Beyer and Weaver in May of 2002.

The Law Offices of Jonathan Alan Quine/ Quine Intellectual Property Law Group, P.C. did not receive the Office Action mailed on December 4, 2001.

Evidence of non receipt includes the following:

First, I have no recollection of having received the Office Action. Given that I was closely supervising this case when it was at our firm, I would expect to have a specific recollection of any office action received in the case.

Second, the firm has no docket entry for the Office Action. It is the firm's practice, without exception, to docket all incoming mail. The date of mailing, due date and extension dates are always docketed for all Office Actions received. A copy of the case print for the file at issue from our docket system is attached herewith. This print out shows no record of the office action being received or of a due date for a response to the office action being docketed.

Third, our copy of the file (i.e., a complete file copy retained by the firm upon transfer of the case to Beyer and Weaver) does not have a copy of the office action in it. It is the Firm's practice, without exception, to file all correspondence from the Patent Office in a chronologically ordered folder.

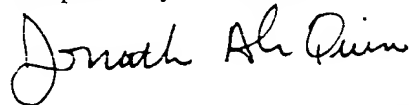
Fourth, my personal chron folder does not have a copy of a letter reporting the Office Action to the client (Maxygen, Inc. in Redwood City, CA). It is my practice, without exception, to forward a copy of all such correspondence from the PTO to the client. A reporting letter describing the nature of the correspondence is always attached. No such reporting letter exists in our files.

Fifth, I have been informed by Sharon Fujita at Maxygen that the Office Action and correspondence reporting the office action is also missing from Maxygen's files and from the physical files transferred from our office to the law firm of Beyer and Weaver.

Accordingly, I hereby declare that the Office Action pertaining to the above referenced application, mailed by the Office on December 4, 2001, was simply never received by the Law Offices of Jonathan Alan Quine/ Quine Intellectual Property Law Group, P.C.

I further declare that all statements made herein of my personal knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that any such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,



Jonathan Alan Quine, J.D., Ph.D.  
Reg. No. 41.261